

In response to the applicant's prior observations that the footing form in the present Wallin invention remains with the wall panel after binder has been provided, the examiner has responded as follows:

"Applicant's argument that the footing form of Schultz is removed is not persuasive. The claim on [sic] requires "so as to remain with the wall portion in such orientation once the footing volume has been filled with binder material" claim 21. The footing form of Schultz certainly remains with the wall portion at least long enough for the concrete cure enough to not to deform once the panels are removed. The claim limitation does not preclude eventual removal of the form."

The fact that the footing form remains with the cast footing is important for the reinforcement of the footing. The applicant in his prior response made extensive submissions as to the importance of the reinforcing value of the footing form in the present invention. Those submissions will now be repeated as follows:

Reinforcement effect of the footing form

A further major distinction between the present invention and the combination of the prior Wallin reference and Schultz is that the footing form in Schultz is removed once the wall portion is poured. In the prior Wallin patent there is no footing form; instead there is a precast footing with no provision for a footing form to remain in place, anchoring the wall panel to a footing. This is the opposite of the arrangement in the present invention as stipulated in claim 21 namely as follows:

b) a footing form:

i) attached to and extending laterally away from the wall portion on the flange side of the wall portion so as to remain with the wall portion

The Examiner had previously observed that this limitation is met in Schultz. However, in Schultz it is specifically stated:

" The importance of open area 49 in footing forming member 9 lies in the fact that it is important that no portion of the wall forming apparatus extend within the concrete receiving cavity 45, other than the tying means 33, which is accessibly disposed above the lower peripheral frame section 13 of a wall forming member 7. This facilitates ease in stripping the integral monolithic footing and wall forming units once the concrete has set and hardened."

The concept contemplated in Schultz is that the footing form in his construction is to be removed from the concrete wall and footing once formed. This is to be contrasted with the

function of the footing form in the present invention. As stated in the disclosure for this present invention:

" [0017] When portions of the outer sheeting material forming the walls of the vertical flange forms extend into the binder in the footing form to serve as coupling means, the outer sheeting of such the forms then serves as reinforcement extending between the cast-in-place portions of concrete in the final wall system."

"[0024] The forms themselves serve as reinforcing for the binder they eventually contain. To improve coupling between these forms and the binder with which such forms are eventually to be filled, without precipitating fracturing of the sheeting material, portions of the walls of the forms may be depressed or deformed inwardly to provide dimples or tabs to be embedded within the binder when the binder is poured into the forms. This improves the composite effect of the forms in serving as a reinforcement to the concrete."

The Wallin footing form is: "attached ... so as to remain with the wall portion in the same orientation once the footing volume has been filled with binder material". The form is part of the final structure. It spans and connects the footing to the wall portion, providing valuable reinforcement. It either strengthens the footing and/or permits the footing to be less massive:

This is a characteristic which is not provided by the forms in Schultz. Nor is it a feature which is provided in the prior Wallin patent. It is a concept arising from the fact that the footing form is, as stipulated in claim 21, attached to ... the wall portion on the flange side of the wall portion so as to remain with the wall portion in such orientation once the footing volume has been filled with binder material. This is a configuration with an associated benefit that would not be obvious to ordinary workmen.

[End of reproducing prior submissions

In order to address the examiner's objection that:

"The claim on [sic] requires "so as to remain with the wall portion in such orientation once the footing volume has been filled with binder material" claim 21. The footing form of Schultz certainly remains with the wall portion at least long enough for the concrete to cure enough to not to deform once the panels are removed. The claim limitation does not preclude eventual removal of the form."

Claim 21 has been amended as follows:

i) attached to and extending laterally away from the wall portion on the flange side of the wall portion so as to remain permanently with the wall portion in such orientation

once the footing volume has been filled with binder material to thereby serve as permanent reinforcing for the binder,

With this amendment present the examiner's objections have been addressed.

The examiner supplemented her observations in the last recited quotation adding:

"Additionally, it is noted that Schultz is only relied upon for the teaching of the footing form being attached to the wall form portion. Wallin clearly discloses flange forms that remain with the wall portion after curing. Accordingly one of ordinary skill in the art, when modifying Wallin system to include attached footing forms would understand or have the common sense to have the footing forms remain with the footing just as the flange forms remain with the flanges."

This objection seems to presume that the transposition to the prior Wallin wall panel of the footing form as in Schultz has already been assumed by "one of ordinary skill in the art". But this assumes the invention, which is improper. Further, once such transposition has been conceived, the examiner is relying on common sense to have the footing form of Schultz remain with the wall panel assembly because the flange forms in prior Wallin remain with the wall panel. The problem with this analysis is that invention is already presumed.

In fact Schultz distinctly intends not only that the footing form will not remain with the final cast wall but that it not even be *attached* to the wall. Schultz describes a robust removable footing form that supports the weight of the wall form above. Furthermore, this footing form must constrain the substantial weight and hydraulic pressure generated by the quantity of concrete being used to cast the wall. This form is removable because it's intended to be reused. This a distinct barrier to presuming that it would be obvious to simply transpose the Schultz footing form portion to the wall panel of the prior Wallin design. To transpose Schultz the to prior Wallin provision would have to be made the attach the Schultz form to the wall panel. The that

Claim 21, as amended distinctly stipulates that the footing form is:

- i) *attached to and extending laterally away from the wall portion* on the flange side of the wall portion so as to remain permanently with the wall portion in such orientation once the footing volume has been filled with binder material to thereby serve as reinforcing for the binder,

The form in Schultz is not *attached* to the final wall that is being cast in any way. If it is attached to anything it is the portion of the form used to cast the wall.

Additionally, the examiner is ignoring the modification that is required to accommodate the filling of the footing form. According to claim 21:

" the flange and footing volumes *are interconnected* to provide continuous, enclosed volumes that serve to contain binder material poured into the footing form through the vertical flange form,"

The present invention does not constitute a simple transposition of the footing form of Schultz to the configuration of the prior Wallin invention. Modification is required and because of such modification, amongst other limitations, the invention as addressed in claim 21 cannot be considered to be obvious.

Reconsideration is accordingly requested.

Additional observations

Commenting on the limitation that the footing form in the present invention is attached to the precast wall portion of the present invention "so as to remain with the wall portion in such orientation once the footing volume has been filled with binder material", the examiner has now stated:

"Schultz is relied upon for the teaching that it is known to form footings and include footing forms connected to wall/flange forms for simultaneously forming/casting the wall (or in the instant case, a portion, being a flange portion of the wall) with the footing."

The applicant challenges the examiner statement that Schultz shows that it is: "known to form footings and include footing forms connected to wall/flange forms..." There is no teaching in Schultz that the footing form is attached to a flange form. The footing form of Schultz would have to be modified to accommodate connection to a flange form, and Schultz comes nowhere near suggesting the use of flange forms. Why the examiner used the expression "connected to wall/flange forms" in order to characterize the prior art disclosure in Schultz is not understood.

Double patenting objection

The examiner is persisting in the double patenting rejection apparently on the basis that the present invention is an obvious variant on the prior Wallin disclosure. It is redundant to rely on both bases to reject an application. Double patenting is more properly reserved for something that could have been claimed in a prior patent that is not barred by prior art. For

example of prior patent may not qualify as prior art if it was published within the one-year grace period or originated from the same applicant.

Double patenting requires that there have been something in the prior specification that was sufficiently disclosed that it could have been claimed. Hence the expression "double patenting". That is not the present situation. The rejection based on double patenting should be withdrawn if the examiner acknowledges that claim 21 is not subject to rejection based on 35 USC 103.

Conclusion

The proposed amendment to claim 21 is not a change that requires a further search by the examiner. It is a clarification of a feature of the invention that the applicant has advanced to the examiner previously which the examiner has found objectionable due to lack of clarity.

The applicant requests that the present amendment be entered and the application allowed. Failing that, the applicant requests the present amendment be entered in order to place the claims in better form for purposes of appeal.

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Respectfully submitted,

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